

In The Matter Of:
United States vs.
PFC Bradley E. Manning

Vol. 13
July 1, 2013
UNOFFICIAL DRAFT - 7/1/13 Afternoon Session

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VOLUME XIII
IN THE UNITED STATES ARMY
UNITED STATES
VS.
MANNING, Bradley E., PFC COURT-MARTIAL
U.S. Army, xxx-xx-9504
Headquarters and Headquarters Company,
U.S. Army Garrison,
Joint Base Myer-Henderson Hall,
Fort Myer, VA 22211
_____ /

The Hearing in the above-titled matter was
continued on Monday, July 1, 2013, at 1:17 p.m., at
Fort Meade, Maryland, before the Honorable Colonel
Denise Lind, Judge.

DISCLAIMER

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This unedited, uncertified draft transcript may contain court reporting outlines that are not translated, notes made by the reporter for editing purposes, misspelled terms and names, word combinations that do not make sense, and missing testimony or colloquy due to being inaudible to the reporter.

1 APPEARANCES :

2
3 ON BEHALF OF THE GOVERNMENT :

4 MAJOR ASHDEN FEIN

5 CAPTAIN JOSEPH MORROW

6 CAPTAIN ALEXANDER von ELTEN

7
8 ON BEHALF OF THE ACCUSED :

9 DAVID COOMBS

10 MAJOR THOMAS HURLEY

11 CAPTAIN JOSHUA TOOMAN

1 PROCEEDINGS,

2 THE COURT: Court is called to order. Let
3 the record reflect all parties present when the court
4 last recessed are once again present in court.

5 Major Fein, when you initially announced the
6 parties, did we announce the change in court reporters?

7 MR. FEIN: Yes, Your Honor.

8 THE COURT: All right. During the lunch,
9 defense, you filed with the court, at least you emailed
10 me a defense clarification of colloquy for stipulations
11 of expected testimony for prosecution exhibits 180 and
12 181. Has that been marked as an appellate exhibit?

13 MR. TOOMAN: It has. We have a copy for you.

14 THE COURT: I have it. And that's appellate
15 exhibit 589 which basically does that witness comparison
16 for number three and number 29 from plaintiff's exhibits
17 180 and 181?

18 MR. TOOMAN: Yes, ma'am.

19 THE COURT: The court also over the lunch
20 period had looked at classified appellate exhibits 479
21 and 475 and compared witnesses three and 29 with

1 witnesses 23 and 107 as identified in appellate exhibit
2 475 and also confirmed they are in fact the same people.

3 Is there anything else we need to address
4 with this exhibit?

5 MR. COOMBS: No, Your Honor.

6 MR. FEIN: No, ma'am.

7 THE COURT: Has the defense had an
8 opportunity to speak or have your expert speak
9 telephonically with the Internet Archive?

10 MR. COOMBS: Yes, Your Honor. We have.
11 Based upon that conversation, my expert speaking with one
12 of their engineers, the defense has decided to withdraw
13 its authentication objection to PE 109 for
14 identification.

15 THE COURT: All right. Thank you. Are you
16 still going forward with your 403 objection?

17 MR. COOMBS: Yes, Your Honor.

18 THE COURT: All right. Government, do you
19 have anything else to add?

20 MR. MORROW: No, Your Honor.

21 THE COURT: Are you going to move for

1 admission of prosecution exhibit 109 for identification?

2 MR. MORROW: Yes, Your Honor. We renew our
3 motion or we move to admit prosecution exhibit 109 for
4 identification into evidence.

5 THE COURT: May I see appellate exhibit 584,
6 please?

7 All right. The court notes that defense has
8 withdrawn its authentication objection to appellate
9 exhibit 109 for identification. In appellate exhibit 584
10 I initially ruled with respect to admitting plaintiff's
11 exhibits 31 and 32, and also ruled that prosecution
12 exhibit 109 for identification was not properly
13 authenticated.

14 Also, in this ruling the court held or the
15 court ruled, its conclusions of law, the prosecution
16 exhibit 109 is a request for information and is offered
17 for the fact that the request was made not for the truth
18 of the matter asserted. The government offers PE 109 for
19 identification for a non-hearsay purpose as
20 circumstantial evidence that PFC Manning was aware of
21 prosecution exhibit 109 for identification and his intent

1 to gather information and send it to WikiLeaks.

2 Although the government has not presented
3 evidence that the accused actually accessed PE 109 for
4 identification, the government has presented evidence
5 that PFC Manning searched Intelink for WikiLeaks and for
6 some of the information on PE 109 for identification.

7 The government has also presented evidence
8 that when a person does an Intelink search and navigates
9 to another website to continue the search, Intelink no
10 longer captures the metadata. The court finds the timing
11 of PE 109 for identification posting in conjunction with
12 other evidence presented by the government as relevant,
13 circumstantial evidence offered for a non-hearsay purpose
14 to further the inference that PFC Manning was aware of
15 the information requested by WikiLeaks in prosecution
16 exhibit 109 for identification.

17 Should prosecution exhibit 109 for
18 identification be properly authenticated, it is relevant
19 for the specifications in charges one and two.

20 Now, the court did an MRE 403 balancing test
21 with respect to prosecution exhibits 31 and 32 for

1 identification because I intended to admit those at the
2 end of the day with these rulings. The court did not do
3 a 403 analysis with respect to prosecution exhibit 109
4 for identification.

5 The court finds that its 403 analysis with
6 respect to plaintiff's exhibits 31 and 32 for
7 identification also applies to prosecution exhibit 109
8 for identification. The court has considered whether the
9 probative value in prosecution exhibit 109 for
10 identification is substantially outweighed by the danger
11 of unfair prejudice under the criteria of Military Rule
12 of Evidence 403 and finds it is not. The court as fact
13 finder will consider the evidence for its proper
14 admissible purposes.

15 Thus, in light of the defense's withdrawal of
16 their authentication objection, and the court's 403
17 analysis, and the analysis with respect to hearsay and
18 relevance, the government's motion to admit prosecution
19 exhibit 109 for identification is granted and prosecution
20 exhibit 109 for identification is admitted.

21 May I see it, please?

1 Prosecution exhibit 109 for identification is
2 admitted.

3 All right. Government, I also -- is there
4 anything else we need to address with respect to that
5 issue?

6 MR. COOMBS: No, Your Honor.

7 MR. MORROW: No, Your Honor.

8 THE COURT: Government, I notice you also
9 submitted via email to me and I want to see if this has
10 been marked as an appellate exhibit, 28 June 2013,
11 relevant and non-hearsay purposes for facts to be
12 judicial noticed.

13 MR. MORROW: Yes, Your Honor. We refiled
14 that with annotations in the comment boxes corresponding
15 to specific evidence that we presented in court.

16 THE COURT: Have you marked that as an
17 appellate exhibit?

18 MR. MORROW: We didn't mark it initially
19 because we didn't know where in line you wanted to mark
20 it, if you wanted to mark it with the original.

21 THE COURT: Why don't we mark it as the

1 original with an A next to it? The original was what?

2 MR. MORROW: So, Your Honor, that filing
3 would be appellate exhibit 587 Alpha.

4 THE COURT: All right. Thank you. Has the
5 defense seen it?

6 MR. MORROW: Yes, Your Honor.

7 THE COURT: Defense has already told me you
8 don't wish additional oral argument, is that true, after
9 this filing as well?

10 MR. COOMBS: Yes, Your Honor.

11 THE COURT: And that has been filed as
12 appellate exhibit 587 Alpha. The court will consider
13 that later today.

14 And there's been an additional combined
15 judicial notice filing.

16 MR. MORROW: Yes, Your Honor. This one is
17 dated 1 July 2013, so today. Again, the difference
18 between this filing and the previous combined judicial
19 notice accounting is that this filing is broken up into
20 facts that would be relevant for the merits phase and
21 facts that would be relevant for presentence.

1 THE COURT: All right. Defense, have you had
2 a chance to look at this yet?

3 MR. COOMBS: Have not, Your Honor.

4 THE COURT: Why don't we do this? Let's make
5 this an Alpha as well along with the original one. The
6 court notes the one was objectionable with respect to the
7 Finkel book and eight and nine the original filing is no
8 longer in the current filing.

9 MR. MORROW: I believe it wasn't the Finkel
10 book, it was the letter from --

11 THE COURT: I'm sorry. I stand corrected.
12 The letter from Senator Levin to Secretary Gates being
13 used for context. So that is no longer one of the
14 objectionable pieces in the new judicial notice on 1 July
15 2013.

16 MR. MORROW: Your Honor, this will be
17 appellate exhibit 588 Alpha.

18 THE COURT: All right. So once again, this
19 is not ripe, any of these judicial notice issues from the
20 defense.

21 Defense, take a look at the combined judicial

1 notice, if you have any issues or objections or believe
2 it doesn't accurately reflect what the state of the
3 judicial notice is, just let me know.

4 MR. COOMBS: Yes, Your Honor.

5 THE COURT: Okay. Is there anything else we
6 need to address at this time before we proceed?

7 MR. COOMBS: No, Your Honor.

8 MR. FEIN: No, ma'am.

9 THE COURT: All right. Government.

10 MR. FEIN: Ma'am, just for the record, the
11 United States was able to provide the two documents
12 asserted as the basis of Mr. Lewis's testimony to the
13 defense during lunchtime.

14 THE COURT: Defense, have you had an adequate
15 time to go over them?

16 MR. HURLEY: Yes, ma'am, we have.

17 MR. FEIN: And the United States calls Mr.
18 Danny Lewis.

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1 Whereupon:

2 DANNY J. LEWIS,
3 called as a witness, having been first duly sworn
4 according to law, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FEIN:

7 Q. Sir, you are Mr. Danny Lewis of the Defense
8 Intelligence Agency?

9 A. I am.

10 Q. Sir, before we begin, if any question that
11 any party or the court asks you elicits a classified
12 answer, please notify the court prior to answering that
13 question.

14 Sir, what is your current position within the
15 Defense Intelligence Agency?

16 A. I'm the senior expert and counterintelligence
17 advisor to the directorate of science and technology for
18 DIA.

19 Q. Sir, what are your general duties and
20 responsibilities in that capacity?

21 A. In the activities that that directorate

1 handles for DIA, I look at those activities from a
2 counterintelligence standpoint insuring that we're taking
3 into account the things that our foreign adversaries, the
4 interests that they would have in those activities, how
5 they might try to stop those activities, and give best on
6 how to do those activities, operations.

7 Q. Sir, when did you begin your government
8 service?

9 A. I joined the Army in July of 1976.

10 Q. And how many of those years, sir, have been
11 in civilian capacity?

12 A. I became a civilian in December of 1997.

13 Q. And did you serve after duty from 1977 until
14 1997?

15 A. No. I actually retired in May of 1997. I
16 had a six month break there when I was figuring out what
17 I was going to do with my life and figured I would
18 continue doing counterintelligence for the Army in a
19 civilian capacity.

20 Q. Sir, how many of those years in the civilian
21 service have been in the field of counterintelligence?

1 A. Since May of 1984.

2 Q. How many years do you estimate that to be?

3 A. About 29.

4 Q. Thank you, sir.

5 Sir, you've mentioned counterintelligence now
6 a few times. What is counterintelligence?

7 A. There's a lot of definitions, but it's
8 generally the information and the activities that we use
9 to identify, disrupt, exploit our foreign adversaries'
10 intelligence services or international terrorism
11 organizations, keep them from defeating us.

12 Q. And, sir, what is counterespionage?

13 A. Counterespionage is an area of
14 counterintelligence that's really more focused on
15 espionage investigations, really focused on proven or
16 disproven allegations against any individual.

17 Q. Sir, what elements do you always look for in
18 significant espionage investigations?

19 A. What's key for us always there will be travel
20 and money.

21 Q. And what do you mean by travel, sir?

1 A. If an individual has or is committing
2 espionage, they actually have to meet with the foreign
3 intelligence service at some point, so that type of
4 travel. We look for travel that is not associated with a
5 normal leave or anything out of the norm, an anomaly, if
6 you will.

7 Money, if we're investigating someone, we've
8 got a pretty good idea of the normal finances for an
9 individual. We're looking for those activities which are
10 not explained by the normal amount of income, a deposit
11 that shows up, jewelry that's bought, a new car, a new
12 house, anything that would show us money is being spent,
13 but we can't necessarily decide where it come from.

14 Q. Sir, could you please briefly explain for the
15 court what are the different functions of
16 counterintelligence?

17 A. Counterintelligence has CI operations,
18 investigations, collections, analysis, and a functional
19 services which has polygraph and some other support
20 things that support all of the other functions.

21 Q. And, sir, what do you mean by analysis and

1 production?

2 A. Analysis is the foundation for all of the
3 operational and investigative activity for CI, those are
4 the folks who are actually studying our adversaries.
5 They look at the individuals, the organizations that are
6 associated with our adversaries and give us a story of
7 who those people are, who those organizations are, how
8 they operate, which then goes into helping the
9 investigations and the operations part of that.

10 Q. And, sir, what is collection?

11 A. Collection is a fundamental basic skill of
12 counterintelligence agents. It can be done through open
13 source. Anytime we're collecting information that's out
14 there, it could be from a person, it could be from a
15 store shop owner, a magazine, anything that discovers the
16 type of activities that gives us a name for when we're
17 collecting information, bringing it in, it could go to
18 the analysts, it could go to the investigators, it can go
19 to the operators.

20 Q. Sir, why does the Department of Defense have
21 a counterintelligence program?

1 A. It is the, it is there to protect us from our
2 foreign adversary's intelligence entities and
3 international terrorist organizations.

4 Q. And, sir, how does counterintelligence help
5 commanders on the battlefield?

6 A. It applies in all of the areas applied in the
7 field. It is the individuals that are running the low
8 level source networks, meeting with the local areas,
9 identifying threats in a particular area. They will
10 handle the investigations that come up in that particular
11 area. If anyone's alleged from an insider, someone
12 outside the wire that's trying to damage us, they do all
13 the investigations and operations that are focused there
14 in theater.

15 Q. Thank you, sir.

16 Now I'd like to have you focus on your actual
17 career in counterintelligence field. When were you in
18 the military?

19 A. July of '76 to December of '97.

20 Q. And what was your rank when you retired, sir?

21 A. I was a chief warrant officer 2.

1 Q. And when did you become a military officer?

2 A. October of 1991.

3 Q. And what was your first counterintelligence
4 job, where was it?

5 A. It was in Germany for the 527 MI Battalion.

6 Q. And from what year, sir?

7 A. That would have been February of 1985 till
8 August of 1988.

9 Q. And what were the general duties and
10 responsibilities that you had at the 527?

11 A. In a position like that it was the full range
12 or in a field office so our handling of any interviews,
13 anybody that wants to come in and report a suspicious
14 activity. You're handling the CI education for everyone
15 that's in the community, the newcomers, the yearly
16 requirement to brief people. The old acronym used to be
17 SAEDA, I'm not sure what the Army calls it now. Any type
18 of support activity for any CI operations, office of
19 operations that are going on in the area, so anything
20 from training, education, investigations, operations
21 support.

1 Q. And, sir, what was your next duty assignment
2 after your assignment to Germany?

3 A. My next CI assignment was to the Army's
4 foreign counterintelligence activity here at Fort Meade.

5 Q. Sir, did that assignment require you to go
6 through a selection process?

7 A. Yeah, it was, the Army has an offline
8 management program which allows people to specialize in
9 one area and not continue to get moved around every three
10 years like the normal PCS cycle.

11 Q. And is that a selective program, sir?

12 A. It is.

13 Q. And how long were you at the foreign
14 counterintelligence agency for?

15 A. On active duty that would have --

16 THE COURT: Yes.

17 MR. HURLEY: Ma'am, in order to move this
18 along, we actually have no objection to the government
19 offering Mr. Lewis's CV as a prosecution exhibit.

20 THE COURT: I'll let the government present
21 their case as they choose.

1 BY MR. FEIN:

2 Q. Sir, the question was what was the role or
3 what did the, what was the mission of the foreign
4 counterintelligence agency at the 902?

5 A. The foreign counterintelligence activity, it
6 was responsible for all the significant counterespionage
7 investigations and all the CI offensive operations that
8 were conducted by the Army.

9 Q. And, sir, earlier you mentioned the offline
10 management program. Why were soldiers who were assigned
11 to FCA, why were they required to be in such a program?

12 A. It was normally assessed based on the
13 experience that had been shown and potential. Before you
14 allowed someone into the organization which handled the
15 Army's most significant sensitive investigation, they
16 wanted to make sure you had the ability to do the job.

17 Q. And, sir, what do you mean by significant
18 investigation?

19 A. In that context, that's normally
20 investigations which fairly certain indicated that
21 espionage has been or is being conducted.

1 Q. And, sir, after you retired in 1997 what was
2 your next counterintelligence job?

3 A. In a few months later in December I came back
4 to the same organization, the foreign counterintelligence
5 agency as a civilian.

6 Q. And, sir, was that, were you a general GS
7 employee or part --

8 A. It was part of a military intelligence
9 civilian excepted career program. Kind of like the same
10 thing I had in the military, it was a way there where
11 Army civilian employees could specialize in one area and
12 stay without being moved around every four or five years.

13 Q. And, sir, how long were you at FCA for that
14 tour as a civilian?

15 A. December '97 until November 2001.

16 Q. And, sir, what were your general duties and
17 responsibilities while you were at FCA as a civilian at
18 that time?

19 A. I was a senior investigator, same type of
20 significant investigations, just as a civilian instead of
21 military.

1 Q. Sir, in the fall of 2001 where did you move
2 to?

3 A. I did a few months with the National Security
4 Agency. After the events of September 11, NSA decided
5 they wanted to bring in some outside expertise into their
6 CI program, they went out into the community collecting a
7 few folks, and based on my experience I was one of the
8 ones that they tried to bring in and help grow a new CI
9 program.

10 Q. Sir, were you hand-picked for that job from
11 your background?

12 A. Yes.

13 Q. And, sir, when you left NSA where did you go?

14 A. I went back to FCA as a promotion to an
15 executive investigator position.

16 Q. And what were your general duties and
17 responsibilities as an executive investigator?

18 A. I oversaw the investigations that FCA was
19 doing as well as continue to conduct some of the
20 investigations myself.

21 Q. And then, sir, what was your next job in the

1 counterintelligence field?

2 A. From there I left to become the chief of
3 training for the DOD joint CI training academy.

4 Q. Sir, what is the joint DOD joint
5 counterintelligence training academy?

6 A. It's the one place where all of the
7 counterintelligence training is done now within DOD for
8 both the military services and the defense agencies.

9 Q. And, sir, how long were the chief the
10 training there?

11 A. That would have been August of 2003 until
12 December of 2006.

13 Q. And what was your next assignment within the
14 field of counterintelligence as a civilian after the
15 chief of training at JCL?

16 A. I became the chief of the counterespionage
17 division and the counterintelligence field activity.

18 Q. And, sir, what was the counterintelligence
19 field activity?

20 A. It was also an agency that was created after
21 the events of 9-11 and it was meant to bring some

1 cohesion to all of the different CI missions within DOD,
2 try to make sure everyone is working in one direction and
3 we don't have people shooting off doing their own little
4 CI thing.

5 Q. And when you say people, sir, could you
6 please --

7 A. Organizations, the defense agencies, the CI
8 entities within the defense agencies as well as the CI
9 entities within the military services.

10 Q. Sir, what were your responsibilities as the
11 chief of the counterespionage division at CIFA?

12 A. We had a couple responsibilities. We had
13 visibility, we were the one entity that set above all the
14 different stovepipes of the military services and defense
15 agencies, so we had visibility over all the significant
16 CI and CT investigations, all the offensive CI
17 operations, so we had visibility over those. And our
18 effort there was to make sure if we saw something that
19 was happening in the Army that would impact something
20 that was happening in the NSA, we would reach those two
21 individuals together to insure that we're not duplicating

1 effort, working too much in one area and not enough in
2 another area.

3 Q. Sir, in your explanation using the term we,
4 what were your specific responsibilities?

5 A. I was responsible for the oversight of all of
6 those activities.

7 Q. And, sir, how long were you at CIFA for?

8 A. CIFA went away in the middle of 2008, became,
9 fell under the Defense Intelligence Agency, so my
10 position stayed the same from December of 2006 until May
11 of 2013, it just transitioned from CIFA to the Defense
12 Intelligence Agency.

13 Q. And how did your responsibilities, if at all,
14 change once you transitioned over to DIA?

15 A. At that time DIA assessed that position
16 should have been a senior position, an expert in
17 counterintelligence, so they identified that position,
18 they announced it, competed it, and I was selected for
19 that position.

20 Q. And what was that position again, sir?

21 A. The chief of the counterespionage division.

1 Q. Sir, does that make you an SES, a senior
2 member of the --

3 A. I'm a defense intelligence senior level
4 individual. It's part of the senior service. SESs are
5 normally associated with being the senior leaders,
6 providing leadership. As a DISL as it's called, we are
7 subject matter experts at the senior level.

8 Q. And, sir, you had to compete for that job?

9 A. Yes.

10 Q. And you were selected?

11 A. Yes.

12 Q. Sir, you've mentioned now throughout your
13 testimony the term operations. What do you mean by
14 operations in general, sir?

15 A. Offensive CI operations, those are the
16 clandestine activities that are focused on individuals
17 that we believe to be or known to be involved in our
18 adversaries' intelligence organizations or in
19 international terrorist activities.

20 Q. And what do you mean by the term
21 investigations?

1 A. Investigations are those significant
2 investigations being conducted across the department by
3 the military services or the defense agencies or the FBI.
4 When that investigation actually has a DOD equity, those
5 investigations would report up to our office and we also
6 maintain oversight over those.

7 Q. And, sir, how long did you serve as the
8 director of the counterespionage section in DIA and CIFA?

9 A. The chief, under CIFA, just, so that would
10 have been from December 2006 to August of 2008.

11 Q. And then what about in DIA?

12 A. Since 2008 until May of '13.

13 Q. Sir, in your capacity as the director of the
14 counterespionage section, how many counterintelligence
15 professionals did you oversee in that position?

16 A. In that particular area, there was about 50
17 to 55 at any one time.

18 Q. And, sir, in your role as the director of the
19 counterespionage section, to whom did you make
20 recommendations based off of your technical advisor role?

21 A. Right. The primary focus of having

1 visibility over the CI operations and the significant
2 investigations was to insure that the undersecretary of
3 defense for intelligence, the deputy undersecretary of
4 defense for intelligence and security was aware of those
5 activities that met a certain criteria that were
6 happening with any given month. We gave monthly
7 briefings to the USDI, the undersecretary of defense on
8 those.

9 Q. And, sir, you said we. Did you give those
10 briefings?

11 A. Yes, I prepared and gave the briefings.

12 Q. And how often did you give those briefings to
13 the undersecretary of defense?

14 A. Verbal briefings were once a month. If there
15 were activities happening between those briefing cycles I
16 would prepare memos to go up to the USDI to make him
17 aware of a particular situation.

18 Q. And, sir, were you responsible for preparing
19 briefs for members of Congress?

20 A. Yes, we do. I was responsible for overseeing
21 a report to Congress every quarter which was focused on

1 the offensive CI operations, basically a summary of what
2 was happening in that quarter, both from an operational
3 standpoint and from a financial standpoint.

4 Q. Sir, in an unclassified manner, could you
5 please explain for the court what you mean from an
6 operational standpoint?

7 A. The activities we're running against a
8 foreign adversary, the contact that we were having with
9 that adversary, and the things that were happening during
10 that relationship, that's it.

11 Q. So you were -- gotcha.
12 And what do you mean from a financial
13 standpoint, or monetary? Excuse me.

14 A. There is normally payment going on in those
15 type of operations between the adversary and the people
16 that are involved in our operations.

17 Q. All right, sir. And what is your current
18 position again, sir, since May 2013?

19 A. Since 2013 I'm the senior expert and
20 counterintelligence advisor for the directorate of
21 science and technology in DIA.

1 Q. In an unclassified overview, sir, what does
2 the science and technology directorate do?

3 A. Still kind of new to that, so from an
4 unclassified area, much like in the CI standpoint from
5 operations and investigations, there are other type of
6 operations that DIE will be responsible for around the
7 globe that would involve scientific type operations where
8 we're -- yeah, I don't know exactly how to say that
9 unclass, I'm still so new to that position.

10 Q. What is your role within that organization?

11 A. I look at the operations that they have
12 planned, activities they have planned, and I look at that
13 from the viewpoint of our foreign adversary, how would
14 they view that, how could they defeat that, what would
15 they do if they found out about that.

16 Q. And were you selected for that job, sir?

17 A. Yes.

18 Q. Sir, at this time are you the most senior or
19 experienced counterintelligence professional in DIA?

20 A. Experienced? Yes. Senior? No.

21 Q. And how do you know that, sir?

1 A. The experience?

2 Q. Yes, sir.

3 A. Because I know all of the CI people within
4 DIA and no one has the background from both the oversight
5 of what's happening across all of DOD as well as the
6 experiences I had on active duty and as a civilian in the
7 Army.

8 Q. Sir, in total how long have you been a badged
9 and credentialed intelligence investigator?

10 A. Continuously since, so about 29 years.

11 Q. Sir, I'd like to now have you focus on
12 significant awards that you've won during your career, if
13 any. What military awards have you received when you
14 were on active duty?

15 A. On active duty I think it was two ARCOMs, an
16 MSM and a Legion of Merit.

17 Q. And have you received as a civilian, sir, any
18 awards for your involvement in any counterintelligence
19 investigations?

20 A. Yes. In 1996 every year DOD gives a set of
21 awards for different, the different function areas within

1 DOD, and from 1996 I was the DOD CI investigator of the
2 year.

3 Q. And how many individuals per year receive
4 this award, sir?

5 A. One.

6 Q. And, sir, in 1996 what was the case that you
7 won that award for?

8 A. It was the joint investigation with the Army
9 and the FBI of retired Colonel George Trofimoff.

10 Q. Sir, who was the person, who was that person?

11 A. He was an individual that was ultimately
12 convicted for committing espionage on behalf of Russia
13 from the Sixties, Seventies and most of the Eighties. At
14 the time he was a civilian within the Department of the
15 Army in Germany working when we were conducting the
16 investigation.

17 Q. And what did he do, sir, that ultimately led
18 to the investigation?

19 MR. HURLEY: Objection, Your Honor.
20 Relevance.

21 THE COURT: We are getting far afield.

1 What's the point?

2 MR. FEIN: Your Honor, the United States
3 intends to offer Mr. Lewis as an expert in
4 counterintelligence and specifically in valuing
5 government information by foreign intelligence services.
6 This goes directly to that based off of his prior
7 experiences and his knowledge base, Your Honor.

8 THE COURT: How many of these investigations
9 are you going to talk about?

10 MR. FEIN: He only received two awards, two
11 investigations.

12 THE COURT: All right. Overruled for now.
13 Go ahead.

14 BY MR. FEIN:

15 Q. Sir, the question was what did Colonel
16 Trofimoff, what did he do that warranted an investigation
17 that you participated in?

18 A. Yes. He was ultimately found to have
19 provided about 50,000 pages of secret and below documents
20 to the Russian government.

21 Q. And, sir, did he get paid to do that?

1 A. Yes.

2 Q. And how much money did he get paid?

3 A. About \$250,000.

4 Q. And what type of information was included in
5 those documents?

6 A. Most of those documents contained what would
7 be called collection requirement type documents. It was
8 a compilation of information that we needed to know if we
9 were, had an opportunity to interview or talk to someone
10 from a foreign country.

11 Q. And, sir, what was the classification of
12 information he compromised and you investigated?

13 A. Secret and below, secret and confidential
14 primarily.

15 Q. Was there any unclassified information?

16 A. Yeah.

17 Q. And, sir, did you win the top DOD
18 counterintelligence investigator award a second time?

19 A. Yes.

20 Q. In what year, sir?

21 A. 1999.

1 Q. And, sir, has anyone that you know of ever
2 won the award twice in the Department of Defense?

3 A. No.

4 Q. You're the only one, sir?

5 A. Yes.

6 Q. Sir, what case was your case in 1999 that you
7 received the award for?

8 A. That was the investigation of retired Army
9 Sergeant David Boone.

10 Q. And, sir, who was Sergeant Boone?

11 A. At the time of the investigation he was a
12 retired senior enlisted member living in Germany. He
13 had, ultimately we determined that he had provided the
14 Russian government between October of '88 and the first
15 part of 1992 classified information.

16 Q. And, sir, approximately how much information
17 through your investigation did you find out that he had
18 provided?

19 A. He only provided about 350 documents every
20 four months, that was his normal meeting cycle.

21 Q. And did he receive money for this

1 information?

2 A. Yes.

3 Q. How much money did he receive for the
4 information, sir?

5 A. About \$7500 for that same time period.

6 Q. Sir, I'd now like to focus on your training
7 and the training you have received in the field of
8 counterintelligence and its subcomponent of
9 counterespionage. What formal training have you received
10 to become a CI agent?

11 A. The basic agent course is a five month course
12 at Fort Huachuca. I did that in 1984.

13 Q. Sir, is that similar to AIT?

14 A. At that time there was no AIT. You had to
15 have one assignment in the Army before you could transfer
16 to a CI agent. That's changed several times throughout
17 the years for the Army, but at the time you had to be at
18 least an E5.

19 Q. And, sir, what information did that course
20 cover?

21 A. All of the fundamentals of

1 counterintelligence, much like the functions I had
2 mentioned, investigations, operations, analysis and
3 production, functional services, collection.

4 Q. And, sir, what advanced counterintelligence
5 training have you received?

6 A. Before the defense joint counterintelligence
7 training academy where I was the chief of training, the
8 Army had an advanced course that was basically what that
9 entity was, and it was specific advanced training in
10 investigation, counterespionage investigations, offensive
11 CI operations and surveillance.

12 Q. And, sir, when did you receive that training?

13 A. That would have been the end -- the beginning
14 of 1992.

15 Q. And, sir, throughout your career have you
16 ever participated in any type of continuing education
17 opportunities?

18 A. That's basically how CI professionals
19 continue to develop. There's, there's not a lot. Once
20 you get the basic fundamentals of investigation,
21 everything from there is experience, learning from things

1 that continue to happen, lessons learned, case studies of
2 subsequent investigations, so it's, I would say the
3 education is continuous. There are yearly conferences
4 where we discuss the big issues for DOD. Every time
5 there's a significant investigation that is resolved
6 within the CI community those are discussed, what did we
7 learn, how did our foreign adversary conduct that
8 investigation, what did we learn about them, how could we
9 apply that to new investigations.

10 Q. Sir, did any of your continuing education
11 opportunities include getting training through symposiums
12 of federal partners outside the DOD?

13 A. Yes. We did a lot of legal training with the
14 Bureau and with the Federal Law Enforcement Training
15 Center in Glynco, Georgia. Mostly with the Bureau it was
16 basically most significant investigations within the U.S.
17 are conducted jointly with the Bureau, it's how to best
18 partner and move those investigations forward.

19 Q. And, sir, over your nearly 30 year career in
20 counterintelligence, have you ever trained others in the
21 field of counterintelligence, counterespionage?

1 A. Yes. I was an instructor at the CI training
2 courses from 1993 until today, and then I had a little
3 three plus years as chief of training where I was not
4 only responsible for developing and updating to insure
5 the training for CI professionals were meeting the mark
6 and meeting the requirements, I also continued to
7 instruct in all of the various courses.

8 Q. And what specific courses have you taught
9 related to CI?

10 A. Investigative methodologies and the advanced
11 training courses as well as in the intermediate and the
12 junior courses. Case studies for the case officers that
13 are going to run our office and CI operations. You
14 really can't separate the offensive CI from the
15 operations. So I always give them the investigative and
16 learn how to do an offensive CI operation.

17 Q. And, sir, how often overall do you actually
18 teach in the field of counterintelligence?

19 A. Now it's only about every quarter, two times
20 every quarter.

21 Q. And, sir, who are the typical students that

1 attend these courses?

2 A. They're either the advanced students getting
3 the advanced investigative training or they're the basic
4 students who are coming and getting basic investigative
5 training.

6 Q. Sir, you've mentioned twice now you've served
7 as chief of training at DJCTA, what were your duties and
8 responsibilities?

9 A. Other than managing the work force, it's
10 working with all the CI executors, seeing what their
11 training needs are, what do they need their special
12 agents to see and do, and insure at one training location
13 we're meeting the requirements of all of the DOD
14 customers.

15 Q. Sir, what civilian education have you
16 received?

17 A. I have a bachelor's of management from
18 University of Maryland University College and a master's
19 in interdisciplinary management.

20 Q. Sir, would you describe your experience of
21 almost 30 years in counterintelligence intelligence as

1 common for most --

2 A. No.

3 Q. Why is it not common, sir?

4 A. All the time within the Army at the Army
5 counterintelligence foreign activity, that was the one
6 place where the Army would have a dedicated investigative
7 element. There's a lot of investigations that are going
8 around, but the ones that are deemed significant where
9 you would need the trust in the individual that had the
10 skills, since they were all done in one place, I was
11 lucky that I had an opportunity to be in that
12 organization for so long and only focus on the
13 significant investigations that the Army had.

14 Q. Sir, in an unclassified manner, and how many
15 CI professionals do you estimate there are within the
16 Department of Defense?

17 A. A little over 3,000.

18 Q. And approximately how many people across the
19 Department of Defense would you estimate have the same
20 level of experience that you have in investigations
21 operations?

1 A. Less than ten.

2 Q. Why is that, sir?

3 A. Well, I guess on the good side there's just
4 not a significant amount of significant espionage
5 investigations that are, that we have across the
6 department. Having seen all of them since the end of
7 2006, I have a pretty good idea of the folks that work
8 those, the lessons learned from those, and actually the
9 ones that would be considered significant where they
10 ended in arrest and just by luck of assignment, few
11 people have the opportunity to work in a dedicated
12 organization like I did.

13 Q. And, sir, you just said having seen since
14 2006. Could you please explain what do you mean?

15 A. As having visibility over all the significant
16 investigations within DOD, and being an investigator at
17 heart, I would have specific knowledge of all of the
18 things that are running, how they're going, how they're
19 going to end, are they going to be resolved, are they
20 going to be able to be prosecuted, so I would have a very
21 good idea of what's happening across all the DOD from an

1 investigative standpoint from counterintelligence and
2 counterterrorism.

3 Q. Sir, is there a requirement for you to have
4 visibility over all of DOD counterintelligence
5 investigation?

6 A. Yes. That division, that was a DOD directive
7 and so all the CI entities within DOD have to report up
8 all of their CI operations and all of their
9 investigations into this one entity that I led.

10 Q. And, sir, you mentioned significant
11 investigation. Approximately how many significant
12 investigations occur each year across DOD?

13 A. There's generally, in any given month there's
14 between 150 and 200. Those come and go, so two to 300 a
15 year would actually pass my desk that I would have
16 visibility over.

17 Q. And, sir, how many significant investigations
18 have you personally worked on as an agent in some
19 capacity?

20 A. Significant counterespionage investigations
21 was about 40, and then there were seven others where I

1 was the co-case agent, supportive agent of seven others
2 that ended up with arrests and prosecutions.

3 Q. And, sir, on average, what is a
4 counterintelligence investigator, how many major senior
5 cases do they see in their career?

6 A. Within the Army in my time, only the folks
7 that were assigned in the forum counterintelligence
8 activity would have an opportunity to work those. And
9 within DOD, NCIS has a similar capability, OSI does not,
10 so there's just not a place where significant cases are
11 worked by one group of people other than in the Army.

12 MR. FEIN: One moment, please, sir.

13 Ma'am, at this point the United States would
14 continue moving forward on laying a foundation for Mr.
15 Lewis's expertise, but it would require a closed session
16 based off of the remaining questions, and pursuant to the
17 court's previous ruling, appellate exhibit 550. However,
18 if the defense wants to cross examine at this point and
19 cross examine also during the closed session, we could go
20 there first.

21 THE COURT: Defense, how would you like to

1 proceed?

2 MR. HURLEY: Ma'am, we would like to cross
3 examine in this session.

4 THE COURT: All right.

5 Mr. Hurley.

6 MR. HURLEY: Thank you, ma'am.

7 Ma'am, may I begin?

8 THE COURT: Yes.

9 CROSS EXAMINATION

10 BY MR. HURLEY:

11 Q. Mr. Lewis, I'd like to begin my examination
12 of you with the same admonition that Major Fein did.
13 Please stop me if I approach saying something that's
14 classified, all right?

15 A. Okay.

16 Q. And just tell me directly if I ask you a
17 question that calls for a classified response, all right?

18 A. Okay.

19 Q. I'm going to use the expression valuing a
20 lot.

21 A. Okay.

1 Q. When I say that, I mean valuing an object for
2 its monetary value.

3 A. Okay.

4 Q. Like if someone wanted to buy it.

5 A. Okay.

6 Q. Like a foreign intelligence service.

7 A. Okay.

8 Q. Like a foreign intelligence service from a
9 person that had a classified document.

10 A. Okay.

11 Q. Do you understand the context of value?

12 A. Yes.

13 Q. Do you recall a conversation that we had on
14 Friday?

15 A. I talked to you on Friday, yes.

16 Q. And you talked to me and Mr. Cassius Hall on
17 Friday?

18 A. Okay.

19 Q. Do you recall that?

20 A. Yes.

21 Q. Do you remember telling me and Mr. Hall that

1 you did not consider yourself an expert at valuing
2 classified information when first contacted to be a
3 witness in this case?

4 A. I remember telling you, that you asked me
5 what, could you provide me a document and I tell you what
6 that document is worth. I did say no.

7 Q. I'm just going to ask the question again, all
8 right, Mr. Lewis?

9 A. Yes.

10 Q. Do you remember telling me and Mr. Hall that
11 you did not consider yourself an expert at valuing
12 classified information when first contacted to be a
13 witness in this case?

14 A. Yes.

15 Q. Anything change over the weekend with respect
16 to that opinion?

17 A. No.

18 Q. So you still don't think that you were an
19 expert at valuing classified information when you were
20 first contacted to be a witness in this case?

21 A. No. I think what I said was when you asked

1 me if you gave me a document, could I tell you how much
2 that would be worth, and I cannot tell you how much that
3 document would be worth.

4 Q. Okay.

5 A. I could tell you what a foreign adversary
6 would pay for it.

7 Q. Do you remember telling me and Mr. Hall that
8 you did not consider yourself an expert at valuing
9 classified information at that time, that is to say, on
10 Friday, the 28th of June, 2013?

11 A. In the way that I just explained it where you
12 said you give me a document.

13 Q. Right.

14 A. Can you tell me what that's worth? Yes, I
15 remember saying that.

16 Q. Right. What you remember saying is, yes, to
17 that question, that you did not consider yourself an
18 expert at valuing classified information at that time.

19 A. Yes.

20 Q. Thank you. Anything change over the weekend
21 with respect to that?

1 A. No.

2 Q. Now, what I just heard Major Fein say is that
3 they're going to offer you as an expert in
4 counterintelligence.

5 A. Okay.

6 Q. Is that right?

7 A. Yes.

8 Q. And they're also going to offer you as an
9 expert in valuing classified information for a foreign
10 intelligence service, is that right?

11 A. Yes. Yes.

12 Q. Now, Major Fein told me about that on Friday.

13 A. Okay.

14 Q. Was that after a conversation that you had
15 with Major Fein? Did you indicate --

16 A. I don't understand the question.

17 Q. On Friday did you speak with Major Fein?

18 A. Yes.

19 Q. Did you tell him that you would, instead of
20 being referred to as a value expert for classified
21 information you wanted to be known as a valuation expert

1 for classified information for a foreign intelligence
2 service?

3 A. No.

4 Q. You didn't tell him that?

5 A. No.

6 Q. Mr. Lewis, ever taken any classes, civilian
7 or military classes in valuing classified information for
8 a foreign intelligence service?

9 A. Don't believe that course exists. No.

10 Q. It does not exist in the Department of
11 Defense?

12 A. A course?

13 Q. Right.

14 A. No, sir.

15 Q. And certainly if it doesn't exist in the
16 Department of Defense, it doesn't exist in the Department
17 of the Army?

18 A. Not that I'm aware of.

19 Q. Because you've partnered so extensively with
20 your federal law enforcement partners, are you aware of
21 any class that discusses valuing classified information

1 for a foreign intelligence services?

2 A. A class?

3 Q. A class.

4 A. No.

5 Q. Do you know of any person who holds himself
6 or herself out as an expert in the field of valuing
7 classified information for a foreign intelligence
8 service?

9 A. I can't speak to that. There's a lot of
10 people that have the same knowledge I have of knowing
11 through their experiences what a foreign intelligence
12 service would pay for it.

13 Q. You've been in counterintelligence for 29
14 years?

15 A. Yes, sir.

16 Q. Anyone hand you a card that indicated that
17 they were an expert at valuing classified information for
18 foreign intelligence services?

19 A. No.

20 Q. Receive a lot of business cards in your 29
21 years on this job?

1 A. Yes.

2 Q. Let's get back to your education. Ever taken
3 any classes offered by a civilian company in valuing any
4 information for a foreign intelligence service?

5 A. No.

6 Q. Ever take any classes offered by a civilian
7 company in valuing information for anyone, period?

8 A. Restate the question.

9 Q. Sure. Ever take any classes offered by a
10 civilian company for valuing any information?

11 A. No.

12 Q. Nothing in college?

13 A. Nope.

14 Q. Nothing in your master's program?

15 A. Nope.

16 Q. Ever receive any military instruction in
17 valuing -- I think we've already covered that. Let me
18 skip ahead.

19 Did you ever receive any military instruction
20 in valuing information for anyone, valuing any kind of
21 information for any kind of --

1 A. No.

2 Q. That wasn't covered in your
3 counterintelligence basic course?

4 A. No.

5 Q. Not in your advanced course?

6 A. No.

7 Q. Not in this joint program that you're talking
8 about?

9 A. No.

10 Q. Not at FLETC?

11 A. No.

12 Q. Not at the Federal Bureau of Investigation?

13 A. No.

14 Q. It was never the subject of any training that
15 you personally gave?

16 A. Training, no.

17 Q. Never been covered ever in any military class
18 that you've received or taught in? We're talking about
19 the value of classified information for foreign
20 intelligence services.

21 A. The information, we determine the value of

1 information by what we know through operations that they
2 do and what we learn through investigations, so there's
3 no training per se, that's the experience part of it.

4 Q. Right. And we'll talk about your
5 experiences.

6 A. Okay.

7 Q. I'm still talking about training.

8 A. Training.

9 Q. Ever been covered ever in any class you've
10 ever taken or taught?

11 A. Not in that way, no.

12 Q. The next questions apply to your professional
13 experience in counterintelligence. The previous
14 conditions about valuing for money for someone to buy it
15 still apply, all right?

16 A. Uh-huh.

17 Q. Have you ever valued classified information,
18 have you ever done it in the first place, like -- let me
19 restart this whole line of questioning, Mr. Lewis.

20 There are two basic areas of
21 counterintelligence, correct?

1 A. Like?

2 Q. There's the investigations side of
3 counterintelligence?

4 A. Okay. Yes.

5 Q. And then there's the offensive side of
6 counterintelligence?

7 A. Yeah. There's a couple others, but that's
8 the two major I would say.

9 Q. Thank you. Ever held a job where all you did
10 was offensive counterintelligence?

11 A. No.

12 Q. So you've never exercised the skill in the
13 first place during the pendency of an investigation of
14 valuing classified information for a foreign intelligence
15 service for the purpose of that investigation?

16 A. I couldn't think of how that would, no.

17 Q. So you've never done it?

18 A. Please restate that then.

19 Q. For sure.

20 THE COURT: I'm confused too.

21 MR. HURLEY: Ma'am, I apologize.

1 BY MR. HURLEY:

2 Q. You've never been an offensive
3 counterintelligence agent?

4 A. As a case officer?

5 Q. Right.

6 A. Right.

7 Q. Right.

8 A. For offensive counterintelligence?

9 Q. Right. You never have?

10 A. No.

11 Q. And as I understand it, those offensive
12 counterintelligence agents have cases?

13 A. Operations, yes.

14 Q. And as a part of that, it may call on them to
15 value classified information for a foreign intelligence
16 service?

17 A. No.

18 Q. It would not?

19 A. I wouldn't consider the case officer valuing
20 the information, no. Normally the foreign service office
21 values the information, they're the ones that determine

1 the value to them.

2 Q. For want of a better word, Mr. Lewis, the bad
3 guys do that, don't they?

4 A. Yes.

5 Q. Ever testified before?

6 A. As a fact witness, yes.

7 Q. So when you say as a fact witness, you mean
8 you've never been accepted as an expert in
9 counterintelligence by a court?

10 A. That is correct.

11 Q. And you've never been accepted as an expert
12 in valuing classified information from a foreign
13 intelligence service by any court?

14 A. That's correct.

15 Q. Do you subscribe to any journals that are
16 dedicated to the valuing of classified information?

17 A. No.

18 Q. Do you know if any exist?

19 A. I do not know if any exist.

20 Q. Do you subscribe to any journals that are
21 dedicated to the valuing of information period?

1 A. Not DOD classified information.

2 Q. Go to any conferences that are dedicated to
3 the valuing of classified information?

4 A. Not specifically addressed that way, no.

5 Q. Ever seen a valuation expert, and this is any
6 way, have you ever seen any valuation expert give a
7 presentation of any sort?

8 A. U.S. expert?

9 Q. Yeah, U.S. expert.

10 A. No.

11 Q. Let's step away from value for a second. To
12 solve problems, Mr. Lewis, professionals employ methods,
13 right?

14 A. Yes.

15 Q. Would you agree with that concept?

16 A. Yes.

17 Q. And professionals can disagree about the
18 reasonableness of those methods, would you also agree
19 with that, in your personal experience?

20 A. Yes.

21 Q. Okay. Let's go back to value now. Do you

1 know what methods a valuation expert would use to come to
2 his or her conclusions regarding value? How would they
3 value the information? Do you know what methods they
4 use?

5 A. Who is they?

6 Q. I'm sorry. Let's talk about experts at
7 valuing classified information for foreign intelligence
8 services.

9 A. U.S. experts?

10 Q. Right. That's what I'm talking about.

11 A. All right.

12 Q. Do you know what methods that those
13 individuals might use to determine value?

14 A. Yes.

15 Q. Do you have any way of grading whether or not
16 those methods are reasonable? Do you know if those are
17 reasonable or not?

18 A. I guess it depends on what they base it on.

19 Q. It may be unreasonable?

20 A. Could be reasonable.

21 Q. Yeah. Could be reasonable too, but it also

1 may be unreasonable?

2 A. I'd have to know what they're basing it on
3 before I could decide that.

4 Q. Have you ever heard the expression a thief's
5 market?

6 A. I think when you asked me that it was no, and
7 it's still no.

8 Q. All right. Mr. Lewis, this is not the first
9 time we've met, is it?

10 A. No.

11 Q. We met in your office once?

12 A. We did.

13 Q. And that was in December of 2012?

14 A. I'll believe you on that. I don't remember
15 -- I remember a meeting in my office. I don't remember
16 it was December.

17 Q. I was there and Mr. Hall was there as well?

18 A. I remember him as well.

19 Q. Do you remember telling me about your
20 experience as an investigator?

21 A. Not specifically, no.

1 Q. Let me rephrase that question. Do you have
2 any independent memories of the conversation that we had
3 at all?

4 A. Not really.

5 Q. We had a subsequent conversation in May of
6 2013?

7 A. Yes.

8 Q. And that was at Mr. Cassius Hall's office?

9 A. Yes.

10 Q. And that was in May of 2013?

11 A. I think I just changed jobs, yeah.

12 Q. So would that have put it in about May of
13 2013?

14 A. I believe so, yes.

15 Q. Do you remember telling me at this second
16 interview that there was no price list for classified
17 documents?

18 A. No.

19 Q. Do you remember telling me that there was no
20 way, to use your words, to value a document that you had
21 been handed?

1 A. In the scenario that you painted where you
2 give me a document, I tell you how much it's worth; I
3 remember that conversation. And the answer was no.

4 Q. We also talked on Thursday of last week; do
5 you recall the substance of that conversation?

6 A. Some. It was a lot of, a lot going on last
7 week.

8 Q. Do you remember telling me that you've never
9 managed offensive counterintelligence operations?

10 A. I do remember that.

11 Q. Not one case?

12 A. One operation.

13 Q. You haven't managed one operation?

14 A. No.

15 Q. For one day?

16 A. No.

17 Q. And do you remember telling me and Mr. Hall
18 on Thursday of last week, and I quote, the adversary
19 values the info?

20 A. We did talk about that, yes.

21 MR. HURLEY: Ma'am, if I may have a second.

1 THE COURT: Yes.

2 MR. HURLEY: Ma'am, we have an offer of proof
3 that we would like to make once we move into closed
4 session.

5 THE COURT: That's fine. Any redirect in
6 open session?

7 MR. FEIN: No, ma'am.

8 THE COURT: All right. Is there anything
9 else we need to address in open session before we close
10 the classified portion of this witness's testimony?

11 MR. FEIN: United States offers for way of
12 administration and we move forward, and if after the
13 parties litigate the court does qualify Mr. Lewis or
14 accepts him as an expert, that the United States would
15 then elicit his testimony in a closed session, and then
16 also elicit his testimony in an open session to summarize
17 that.

18 THE COURT: All right. So the closed session
19 to determine the expertise issue, then depending on the
20 court's ruling on that should there be any further
21 testimony by the government, that would also be in closed

1 session followed by the open session testimony, is that
2 my understanding?

3 MR. FEIN: With a recess in between, yes,
4 ma'am.

5 THE COURT: Defense?

6 MR. HURLEY: Yes, ma'am. We have no problem
7 with that course of action.

8 THE COURT: Is there anything else we need to
9 address? I do want some estimate of time so I can tell
10 the members of the public and the press when we
11 approximate coming back.

12 MR. FEIN: May we have a moment, Your Honor?

13 THE COURT: Yes.

14 As you're having your moment, understanding
15 that this is an approximation.

16 MR. FEIN: Ma'am, the United States estimates
17 two hours between opening, closing and any litigation on
18 his expertise.

19 THE COURT: All right. So we would be then
20 coming back into open session approximately 1630, or do
21 you want to say 1700?

1 MR. FEIN: 1630, ma'am.

2 THE COURT: Defense agree with that?

3 MR. HURLEY: Yes, ma'am.

4 THE COURT: So what we're going to do now is
5 recess the open portion of the court and then proceed
6 into closed session. The parties have advised the court
7 that we'll approximately be going back into open session
8 at 1630. Should we go beyond that, I'll try to advise
9 the bailiffs to advise the press and the public of that
10 schedule.

11 (RECESS.)

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	10:8,14	3:6	20:9;22:11;26:1,2;28:16;31:4
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